Supreme Court, U. S.
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In The

SUPREME COURT OF THE UNITED STATES

1979 Term

No. 80-51

CHARLES A. BRIDGES,

Appellant,

v.

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF MENTAL HEALTH AND
MENTAL RETARDATION,

Appellee.

APPEAL FROM THE SUPREME COURT OF VIRGINIA

JURISDICTIONAL STATEMENT

Kaletah N. Carroll
4015 Chain Bridge Road
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Attorney for
Appellant

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SUPREME COURT OF THE UNITED STATES
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No.

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v.

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JURISDICTIONAL STATEMENT

(a) QUESTION PRESENTED

The question is whether Virginia's statutes, Sections 37.1-105 through 37.1-119 of the 1950 Code of Virginia, violate the Fourteenth Amendment of the United States Constitution. These sections require spouses of persons involuntarily confined in one state owned and operated

institution to pay to the state, on a per capita basis, for such confined person's maintenance, support and care, based on the statutory and common law familial duty of support. At the same time, other spouses of persons involuntarily confined in other Virginia owned and operated institutions are not required to pay for such services rendered to their confined spouses on any basis. Do these statutes requiring such payment in one instance and not the other violate the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution when the duty of providing maintenance, support and care is the same in both instances? And, a further question is whether the said statutes violate the Due Process Clause of the Fourteenth Amendment of the United States Constitution when they fail to provide for formal notice, a hearing, counsel, and the right of cross-examination at or

about the time the debt to the Commonwealth is first incurred.

And, whether the statutes violate substantive Due Process of Law or Equal Protection of the Law Clauses of the said amendment when they permit the Commonwealth to act in an arbitrary manner in picking and choosing who, among these spouses set forth in Sections 37.1-105 through 37.1-119 of the 1950 Code of Virginia as amended, shall be required to pay and who will not be required to pay.

(b) All parties are listed in the caption of this case.

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(d) OPINIONS BELOW

The order of the Supreme Court of Virginia in denying the petition of Charles A. Bridges for an appeal dated April 14, 1980, is not reported, but is listed by name as a refused appeal in Volume 220 of the Virginia Reports. (Appendix [j],[i]). The Circuit Court of Fairfax County, Virginia, issued an order on July 12, 1979, embodying its letter of opinion, dated April 30, 1979, upholding the constitutionality of the said statutes. (Appendix [j],[ii]).

(e) JURISDICTION

(i) This appeal is taken by Mr. Bridges in an effort to have certain Virginia statutes declared unconstitutional. The said statutes, attached in Appendix (v) (a) because of length, authorize the Commonwealth of Virginia, Department of Mental Health and Mental Retardation, to compel the spouse of a person who is involuntarily

incarcerated in a Virginia owned and operated institution because such person is a danger to him or her self and others, to pay fees which are not the costs of the actual services rendered to such person, but are a per capita costs of the maintenance, support and care of all such persons incarcerated in that particular state owned facility for the mentally ill. This obligation in the said statutes is based on the duty of support arising from the marital relationship.

At the same time, Virginia exempts all other spouses of persons involuntarily incarcerated in other state owned and operated institutions, other than mental, from paying for any maintenance, support or care for the incarcerated spouse even though the duty of support is the same for these spouses as it is for spouses incarcerated in the state owned and operated mental institution. The per capita fees

charged the spouse of an involuntarily incarcerated person in a Virginia mental institution are imposed without formal notice or an opportunity to be heard, without counsel and without the right of cross-examination before or near the time of the imposition of the said fees, and no adequate standard is set so that the administration of the statute is arbitrary and capricious in the Commonwealth's selection of who shall and shall not pay such fees.

(ii) This appeal is taken from the final order of the Supreme Court of Virginia entered on the 14th day of April, 1980, which denied the petition of Charles A. Bridges for an appeal from a final order entered in the Circuit Court of Fairfax County, Virginia, on July 12, 1979. By this, the Supreme Court of Virginia upheld the validity of these Virginia statutes in face of Mr. Bridges' direct constitutional challenge. Mr.

Bridges did not apply for rehearing in the Supreme Court of Virginia, because there were no grounds for such a petition, there were no new cases decided within the time for such petition for rehearing on any relevant point.

On June 26, 1980, Counsel for Mr. Bridges filed a "Notice of Appeal to the Supreme Court of the United States", in both the Supreme Court of Virginia and the Circuit Court of Fairfax County, Virginia, the latter being the Court possessed of the record at the time of the filing of the Notice of Appeal. A copy of the said Notice of Appeal was mailed, postage prepaid, to Counsel for the Commonwealth of Virginia, Department of Mental Health and Mental Retardation, and to the Attorney General of Virginia, and to this Court along with her "Appearance and Notification

Form", on June 25, 1980.

(iii) This Court's jurisdiction is invoked under 28 U.S.C. Sec. 1257 (2). Cases which sustain this jurisdiction include: Levy v. Louisiana, 391 U.S. 68 (1968); Rinaldi v. Yeager, 384 U.S. 305 (1966); In Re Application of Fre Le Poole Griffiths For Admission to the Bar, 413 U.S. 717 (1973); Carrington v. Rash, 380 U.S. 89; Board of Regents v. Roth, 408 U.S. 64.

(f) CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The United States Constitution, Amendment XIV, Section 1, provides in pertinent part:

> "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property

without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

1950 Code of Virginia as amended, Sections 37.1-105 through 37.1-119, which are lengthy and are set forth in verbatim in Appendix (v).

(g) STATEMENT OF THE CASE INCLUDING THE RAISING OF AND RULING UPON THE FEDERAL QUESTION

Statement of Facts

Sylvia Bridges, the former wife of the Appellant, was involuntarily committed to Western State Hospital, Staunton, Virginia, an institution owned and operated by the Commonwealth, on the 29th day of July, 1974, by a Special Justice in Richmond, Virginia, pursuant to Section 37.1-67 of the 1950 Code of Virginia as it existed in July of 1974. Sylvia Bridges was at that time a hopeless victim of schizophrenia which varied from agitated to

catatonic states. She was both dangerous to herself and others. There was nothing that could be done medically for her condition.

Sylvia Bridges died on September 2, 1977, at Western State Hospital. By its own admission (see Appendix [v][b]), Western State Hospital (the Commonwealth) would never have permitted her discharge after her initial admission except to a private hospital that had facilities to imprison Sylvia Bridges.

Western State Hospital is an institution offering confinement and limited medical care to its inmates.

It is stipulated and agreed by the parties hereto that the Commonwealth makes no charge either to the confined person or such person's spouse for the medical and dental services rendered, nor any charge for support, maintenance or

care, or any other costs for any other involuntarily confined persons in any of its other state owned and operated facilities, other than mental facilities. It is further stipulated that there are no provisions in the Virginia law that require such payments either by the person or their spouse, except in the case of the mentally ill, drug addicts, or alcoholics who are involuntarily committed as a danger to themselves or others. (Appendix [v][c]).

Additionally, there is no standard set for the determination by the Department of Mental Health and Mental Retardation as to which persons committed, or their spouse, are financially able to pay the expenses of the care, treatment and maintenance of the person committed, (Appendix [v][d]), and the determination of who is able to pay is done by some employee of the Department when the person is first committed, without a hearing and without

notice of such hearing, provided for determination by the Department of these factual issues prior to or concurrent with the commitment of the person for whose care such charges are made, and no opportunity is given such committed person (by guardian), or such person's spouse, to be represented by counsel prior to the determination, by the Department, of who shall pay, and no right of cross-examination is available prior to the incurring of the obligation of the debt.

The charges sued for by the Commonwealth in this cause do not represent the value or costs of any services rendered to Sylvia Bridges nor does it represent the value of the room and board provided for her. By admission of the Commonwealth, the charges made by the Commonwealth are in no way related to Sylvia Bridges. These charges are based solely on a per capita costs of all patients in that

particular cost area. (Tr. 5/9/79, p.23, line 11-23, 24, 25, 26 and 27; Appendix [v] [d]).

The decision as to whether the Commonwealth is going to pursue a claim against any person committed, or that person's spouse, is made by an employee in the Department of Mental Health and Mental Retardation. In the case at Bar, the employee arbitrarily decided Mr. Bridges had the ability to pay because the employee did not feel like life insurance was a necessity to the protection of a minor child, whose mother was unable to care for her in the event of her father's death, and Mr. Bridges was paying life insurance premiums on his life. (Tr. 5/9/79, p.30, line 18-23; p. 31, line 1-20; Appendix [v] [e]).

Sylvia Bridges died in the said institution on September 2, 1977 and on July 26, 1978, this proceeding began when the

Commonwealth of Virginia filed an "Application for Order to Compel Payment of Expenses Pursuant to Virginia Code Section 37.1-110, et seq." against Charles A. Bridges in the Circuit Court of Fairfax County, Virginia. Mr. Bridges filed a Plea in Bar and an Answer on August 29, 1978. The Plea in Bar properly raised the constitutionality of Virginia statutes, Section 37.1-105 through 37.1-119. (Appendix [v][a]). The Circuit Court of Fairfax County, Virginia, by letter of April 30, 1979, informed counsel of its finding that Sections 37.1-105 through 37.1-119 of the Virginia statutes are constitutional and do not violate the Equal Protection Clause nor the Due Process Clause of the Fourteenth Amendment of the Constitution of the United States. The final order concerning the Plea in Bar was entered in the Circuit Court on July 12, 1979. (Appendix [ii]). Notice of Appeal to

the Supreme Court of Virginia was filed on August 1, 1979, and the Petition for Appeal to the Supreme Court of Virginia was filed on October 9, 1979.

The Petition for Appeal was denied by the Supreme Court of Virginia on April 14, 1980. (Appendix ii). Notice of Appeal to the United States Supreme Court was filed on June 26, 1980, in both the Supreme Court of Virginia and the Circuit Court of Fairfax County, Virginia. (Appendix iv).

(h) THE FEDERAL QUESTION PRESENTED IS SUBSTANTIAL

This Court has never ruled upon the validity of state statutes which authorize the State to reach out and take property of a spouse or other family members of a person involuntarily incarcerated in a state owned and operated institution based on the statutory or common law duty of such spouse or other family member to provide support for such incarcerated

person, when the fees charged by the state are not for the costs of that particular person's care, maintenance and support, but are based on a per capita costs, and when other spouses and family members of persons involuntarily incarcerated in other state owned and operated facilities are not required to pay any fees to the state for maintenance, support and care of their involuntarily incarcerated spouses and relatives on any basis, although the duty to provide support, maintenance and care is the same in both instances.

Sections 37.1-105 through 37.1-119 of the 1950 Code of Virginia as amended violate the Equal Protection Clause of the Fourteenth Amendment of the Constitution of the United States. These sections require that a person's estate or such person's spouse pay for the care, treatment and maintenance of such person (in a Virginia owned and operated mental institution)

when such person is involuntarily incarcerated because such person is a danger to his or her self or others. However, no such charges are made by the Commonwealth of Virginia for the identical services when they are rendered to any other person who is involuntarily incarcerated in any other institution owned and operated by the Commonwealth, except mental institutions. This is a blatent discrimination by Virginia. There is no distinction in the duty of support owed to a spouse who is a danger to society and is locked up in a jail and the duty of support owed to a spouse who is locked up in a mental institution. Virginia excuses the spouses of those in penal facilities from any such charges while it enforces the obligation of support on spouses of those in mental institutions. By doing so, Virginia seeks to create a separate class. However, if it is a class, it is a class without a distinction as to spouses and families. The

duty of a spouse to provide support, maintenance and care for their institutionalized relatives is the same in both instances. The Supreme Court of Virginia said in Commonwealth v. Shepard, 188 S.E.2d 99(1972), and Commonwealth v. Sharrett, 240 S.E.2d 522, that the code sections involved were based on the intent of the Virginia legislature in Section 20-61 of the 1950 Code of Virginia as amended. (Appendix[v][a]). The Supreme Court of Virginia has, in these two cases, interpreted Sections 37.1-105 through 37.1-119 as support statutes; that is, the object of the legislation being to require those persons with a duty of support to pay such support to the state and relieve the state from the financial burden of support when their relative is involuntarily incarcerated in a state owned and operated mental institution. Section 20-61 of the 1950 Code of Virginia makes no distinction between the duty of support owed by a spouse,

parent of child to its relative who is incarcerated in a state owned mental facility and the duty of support owed by a spouse, parent or child to its relative who is incarcerated in a state owned penal and rehabilitation institution. The duty is the same in both cases. Any distinction between the duty owed in the two situations is a feigned one. The state has arbitrarily chosen to enforce the duty against the families of the mentally ill, while at the same time exempting the families of others involuntarily incarcerated. This Court said in Walters v. St. Louis, 347 U.S. 231, that classification must rest on real and not feigned differences, and that the distinction between classes which the state has made have some relevance to the purpose for which the classification is made. The object of the legislation in question is to relieve the financial burden to the state of the costs of maintenance, support and care of the persons

of those involuntarily incarcerated in the state owned and operated facility. The object is fine, but invidious discrimination arises when the state chooses to enforce the duty of support, by statute in one case and not the other, when the duty of support is the same and the distinction between the duty of the families of these various groups so incarcerated has no relevance to the purpose for which the classification is made. Levy v. Louisiana, 391 U.S. 68. The discrimination has no relation to the object of these statutes. This Court said in In Re Griffiths, 413 U.S. 717 (1973): "In order to justify the use of a suspect classification, a state must show that its purpose of interest is both Constitutionally permissible and substantial, and that its use of a classification is 'necessary . . . to the accomplishment' of its purpose of the safeguarding of its interest." In Rinaldi v. Yeager, 384 U.S.

305 (1966), this Court said the Equal Protection Clause imposes a requirement of some rationality in the nature of the class singled out and that the distinctions drawn must have some relevance to the purpose for which the classification is made. The selection of one group of spouses with duty of support on which to place the burden to reduce the costs to the State, and the exemption of other spouses with the same duty of support has no relevance to the purpose for which the classification was made. The fees charged, although defined as maintenance, support and care in the statutes, and the obligation to pay is defined by the Supreme Court of Virginia as that obligation arising from the familial relationship, it is in fact a tax, because the fees are not related to the actual costs of the services, care and maintenance of Mrs. Bridges, but are based on a per capita

costs. Mr. Bridges was doubly taxed; not only does he pay through the general taxes Virginia allocated to such institutions as a citizen and resident of Virginia, but because the charges made pursuant to these Sections are based on a per capita cost of all persons receiving services, Mr. Bridges is thus paying for those who are deemed to be unable to pay as well as those who were charged less than he was charged for the same services. "Invidious" by definition means unfair discrimination, and double taxation of this sort certainly fits that definition and violates the Fourteenth Amendment to the United States Constitution.

The courts of the states are in utter confusion over statutes similar to the Virginia statutes in question. Most are compiled in an annotation at 30 A.L.R. 3d 363. Among those, Kough v. Hoehler 109 N.E. 2d 177, based its ruling on the fact

that the family of the incarcerated spouse benefits but that is no distinction, because a family of a person incarcerated in the penal and rehabilitation systems receives benefits by the rehabilitation offered in the penal system. Some prisoners benefit from rehabilitation, some do not. Mrs. Bridges could never be helped. Some in the mental facilities benefit, some do not. Department of Mental Hygiene v. Kirchner 388 P.2d 720, held that the purpose of confinement was the protection of society from the confined person, his own protection and possible reclamation as a member of society. Hence, the costs of maintaining the state institution cannot be charged to one class of society. The Court said a statute violates the Equal Protection Clause if it selects one particular class of persons for a species of taxation and no rational basis supports such classifi-

cation. This case was remanded to the California court upon petition to the United States Supreme Court because the California court did not say whether it based its ruling on the California Constitution or the United States Constitution 85 S.Ct. 871. On remand, the California court held that it was based on the California constitution. Other cases in the annotation holding a relative responsible are distinguishable from the case at bar on either factual situations or on points of law raised. Contra to the appellee's position, California has continued to follow Kirchner: People v. Gibbert 462 P.2d 580; Dept. of Mental Hygiene v. Bank of America N.T.S.A. 83 Cal. Rep. 559; County of San Mateo v. Boss 88 Cal. Rep. 389, distinguishes the case on facts as did In Re Estate of Gridley 108 Cal. Rep. 200. In Hospital Services, Inc. v. Brooks 229 N.W. 2d 69,

the North Dakota court held that whether the commitment is criminal or civil, the purpose is the same because the purpose of the confinement is for protection of society and the committed person and his possible reclamation as a productive member of society and therefore, the costs of maintaining the state institution cannot arbitrarily be charged to one class of society.

37.1-105 through 37.1-119 of the Virginia code permits the State, by its own admission, to select at the will of some employee and without any standards, who will and who will not be charged. Before Mr. Bridges ever reached a status in which he could have a judicial review, he was a victim of discrimination in the unequal application of the law. This is a statute that allows the state to take away property from citizens, not one that provides welfare for the needy. A

standard which states that any person having income of X dollars per year with no less than X dependents could be forgiven the debt would at least provide some protection for equal application of the law. The burden is placed upon these spouses selected for the honor of paying, to later defend the state's law suit to enforce the obligation if they fail to pay while others are exempted from any obligation, at the whim of an employee, and are relieved of any necessity of defending their property. Substantive due process has been defined as a limitation upon arbitrary power and a guaranty against arbitrary legislation, demanding that the law shall not be unreasonable, arbitrary, or capricious and securing a citizen against any arbitrary deprivation of his rights, whether relating to his life, his liberty, or his property. Jones v. Brian, 165 U.S. 180, 41 L. ed.

677, 17 S.Ct. 282; Scott v. McNeal, 154 U.S. 34, 38 L. ed. 896, 14 S.Ct. 1108. See also 16 Am. Jur. 2d. Constitutional Law, Sec. 550, p. 946, 947, 948. Substantive due process requires that the law will operate equally. Later judicial review cannot satisfy the obligation of determining a standard of who is able to pay. The equality of the determination by the Department's employee of who has to pay and who doesn't have to pay is the question before the Court, not whether those spouses and relatives selected to pay are equally judged. Many may be eliminated by this Department employee who really can pay.

Too, the Court hearing may come at a time when the spouse's circumstances have changed. This does not provide for equality of treatment by the state; no provision is made for spouses or relatives to apply for judicial review of the

initial decision of the employee of the Department. Only when the Commonwealth applies for enforcement can a spouse or relative have a hearing. This may be years later as it was for Mr. Bridges.

The Supreme Court of the United States said in the case of Fuentes v. Shevin, 92 S.Ct. 1983, cert. den., 93 S.Ct. 177, 180, that notice and hearing must be granted at a meaningful time. The fact that a later hearing may be had does not cloak the initial determination of fact without a hearing with legality. The Supreme Court of Michigan in Miller v. State Dept. of Revenue, 188 N.W. 2d 795, upheld a decision of the Court of Appeals, 71 N.W. 2d 3, which found that the administrative agency must hold a hearing on the question of liability when it is first occurred. The wrong that is done by the arbitrary picking and choosing

of who shall have the burden of paying cannot be later undone.

These Virginia statutes are also totally devoid of any procedural safeguards that are required for even minimal due process of law. It is a well established principle that procedural due process is required in administrative proceedings when adjudications of fact are made which operate to deprive a person of a constitutionally protected interest. Hannah v. Larche, 80 S.Ct. 1502; Morgan v. United States, 58 S.Ct. 773. Here we have an administrative employee determining which persons have the ability to pay and determining such without a hearing, notice, taking of evidence or confrontation. Notice of hearing, hearing, taking of evidence and confrontation are essential to due process of law. Board of Regents v. Roth, 92 S.Ct. 2701, Goldberg v. Kelly, 90 S.Ct. 1011. Informal correspondence

between the Department and Mr. Bridges does not satisfy the procedural requirement for procedural due process of law. McDonald v. McLucas, 381 F. Supp. 831.

(i) CONCLUSION

The questions presented in this appeal are substantial and of public importance, and therefore require consideration with briefs on the merits and oral argument for its resolution.

Respectfully Submitted,

Charles A. Bridges, By Counsel

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Counsel for Charles A. Bridges
4015 Chain Bridge Road
P.O. Box 434
Fairfax, Virginia 22030
Phone: (703) 591-4071

-30-

Certificate of Service

I hereby certify that on this 11th day of July, 1980, I served three copies of the foregoing Jurisdictional Statement to the Supreme Court of the United States on Mr. Gary W. Lonergan, Redmon and Lonergan, 2 Skyline Place, Suite 103, 5302 Leesburg Pike, Baileys Crossroads, Virginia, 22041, and Mr. Marshall Coleman, Attorney General of Virginia, by mailing the said copies by United States mail, postage prepaid and properly addressed.

I further certify that Mr. Lonergan is the attorney for the Commonwealth of Virginia, Department of Mental Health and Mental Retardation, and that Mr. Marshall Coleman is the Attorney General of Virginia.

Kaletah N. Carroll

Commonwealth of Virginia

County of Fairfax, to-wit:

Personally appeared before me, Susan Lynn Collier, a Notary Public in and for the County aforesaid, in my said County, on this 11th day of July, 1980, KALETAH N. CARROLL, who, after first being duly sworn, stated that the facts set forth in the foregoing Certificate of Service are true and correct and she did subscribe her name thereto.

Susan Lynn Collier
Notary Public, as aforesaid

My commission expires: April 23, 1984.

A P P E N D I X

(j) APPENDIX

(i) VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Monday the 14th day of April, 1980.

Charles A. Bridges, Appellant,

against - Record No. 791486
Circuit Court No. L-43385

Commonwealth of Virginia, Department of Mental Health and Mental Retardation,

Appellee.

From the Circuit Court of Fairfax County

Finding no reversible error in the judgment complained of, the court refuses the petition for appeal filed in the above-styled case.

A Copy,

Teste:

Allen L. Lucy, Clerk

By: /s/

Deputy Clerk

(ii) IN THE CIRCUIT COURT FOR
THE COUNTY OF FAIRFAX, VIRGINIA

COMMONWEALTH OF VIRGINIA DEPARTMENT OF MENTAL HEALTH AND MENTAL RETARDATION,	)	
Petitioner	)	LAW
vs.	)	NO.
CHARLES A. BRIDGES,	)	43385
Defendant	)	

ORDER

This cause came on to be heard upon Petitioner's Application For Order To Compel Payment Of Expenses, the Defendant's Plea in Bar and Answer, the oral testimony and documentary proof introduced into evidence, the oral argument of counsel, and the Memoranda submitted by counsel, and

IT APPEARING TO THE COURT that:

1. Section 37.1-105 through 37.1-119 of the 1950 Code of Virginia, as amended, are constitutional and do not violate the equal protection clause of

the Fourteenth Amendment of the Constitution of the United States.

2. The above-mentioned sections are constitutional and do not violate the due process clause of the Fourteenth Amendment of the Constitution of the United States or Article I, Section 11 of the Constitution of Virginia.

3. The said sections are constitutional and do not violate the separation of powers as provided in Article I, Section Five, and the division of powers as mandated in Article III of the Constitution of Virginia.

4. The Defendant, CHARLES A. BRIDGES, has sufficient ability to pay for the expenses of his wife Sylvia Bridges, the Court having considered the financial condition and estate of CHARLES A. BRIDGES and his present and future needs.

5. The Petitioner should recover and have judgment against the Defendant

CHARLES A. BRIDGES in the amount of $6,416.40, now therefore, it is

ADJUDGED, ORDERED and DECREED that Defendant's Plea In Bar be, and it hereby is, denied, and it is further

ADJUDGED, ORDERED, and DECREED that Petitioner recover and have judgment against the Defendant CHARLES A. BRIDGES in the amount of $6,416.40, with interest thereon at the judgment rate (8% per annum) from date of judgment until paid, and costs.

ADJUDGED, ORDERED, and DECREED that the transcript of testimony and proceedings in this cause shall become a part of the record in this cause when said transcripts are filed with the Clerk of this Court pursuant to Rule 5:9 of the Rules of the Supreme Court of Virginia.

ENTERED: July 12, 1979.

/s/
Lewis D. Morris,
Judge

SEEN:

By /s/
Gary W. Lonergan
Counsel for Petitioner

SEEN AND EXCEPTED TO:

/s/
Kaletah N. Carroll
Counsel for Defendant

NINETEENTH JUDICIAL CIRCUIT
OF VIRGINIA

County of Fairfax City of Fairfax

City of Falls Church

Barnard F. Jennings
William G. Plummer
Lewis D. Morris
Burch Millsap
James C. Cacheris
Thomas J. Middleton
Richard J. Jamborsky
Lewis H. Griffith

Fairfax County
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4000 Chain
Bridge Road
Fairfax,
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April 30, 1979

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Re: Commonwealth of Virginia, Department of Mental Health and Mental Retardation vs. Charles A. Bridges - Law No. 43385

Dear Counsel:

After consideration of argument of counsel heard on March 23, 1979, memoranda submitted and authorities cited, I have reached the following conclusions:

(1) That Sections 37.1-105 through 37.1-119 of the 1950 Code of Virginia, as amended, are constitutional and do not violate the equal protection clause of the Fourteenth Amendment of the Constitution of the United States.

(2) That the above mentioned sections are constitutional and do not violate the due process clause of the Fourteenth Amendment of the Constitution of the United States or Article I, Section Eleven, of the Constitution of Virginia.

(3) That the said sections are constitutional and do not violate the separation of powers as provided in Article I, Section Five, and division of powers as mandated in Article III of the Constitution of Virginia. Defendant's plea in bar is denied.

I suggest that Mr. Lonergan prepare an order in accord with the above findings and have Mrs. Carroll endorse same for approval as to form.

With kindest personal regards, I remain

Very truly yours,
/s/
Lewis D. Morris

(iv) IN THE SUPREME COURT OF VIRGINIA

CHARLES A. BRIDGES, Appellant
vs.

[FILED: JUN 23 1980]

RECORD NO. 791486

COMMONWEALTH OF VIRGINIA)
DEPARTMENT OF MENTAL HEALTH)
AND MENTAL RETARDATION,)
)
Appellee)

and

IN THE CIRCUIT COURT OF FAIRFAX COUNTY, VIRGINIA

COMMONWEALTH OF VIRGINIA)
DEPARTMENT OF MENTAL HEALTH)
AND MENTAL RETARDATION,) [FILED: JUN 23 1980]
)
Petitioner) LAW
)
vs.) NO.
)
CHARLES A. BRIDGES,) 43385
)
Defendant)

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

NOTICE is hereby given that CHARLES A. BRIDGES, the Appellant in the Supreme Court of Virginia, and the Defendant in the Circuit Court of Fairfax County, Virginia, hereby appeals to the Supreme Court of the United States from a final order of the Supreme Court of Virginia entered April 14, 1980, refusing the Petition for Appeal filed by CHARLES A. BRIDGES and thus

affirming the decision of the Circuit Court of Fairfax County, Virginia. The Circuit Court of Fairfax County, Virginia, is possessed of the record at the time of the filing of this Notice.

This appeal is taken pursuant to 28 U.S.C., Section 1257 (2).

/s/
KALETAH N. CARROLL
Counsel for Charles A. Bridges
4015 Chain Bridge Road
P.O. Box 434
Fairfax, Virginia 22030
Telephone 703-591-4071

Certificate of Service

I hereby certify that on the 25th day of June, 1980, I served a copy of the foregoing Notice of Appeal to the Supreme Court of the United States on Mr. Gary W. Lonergan, Redmon and Lonergan, 6911 Richmond Highway, Suite 400, Alexandria, Virginia, 22306, and Mr. Marshall Coleman, Attorney General of Virginia, by mailing the said

copy by United States mail, postage prepaid and properly addressed.

I further certify that Mr. Lonergan is the attorney for the Commonwealth of Virginia, Department of Mental Health and Mental Retardation, and that Mr. Marshall Coleman is the Attorney General of Virginia.

/s/
Kaletah N. Carroll

Commonwealth of Virginia
County of Fairfax, to-wit:

Personally appeared before me, Susan Lynn Collier, a Notary Public in and for the County aforesaid, in my said County, on this 25th day of June, 1980, KALETAH N. CARROLL, who, after first being

duly sworn, stated that the facts set forth in the foregoing Certificate of Service are true and correct and she did subscribe her name thereto.

/s/
Notary Public, as aforesaid

My Commission expires: April 23, 1984.

(v) (a) APPLICABLE SECTIONS
OF THE
1950 CODE OF VIRGINIA
As Amended

Section 37.1-105. "WHO LIABLE FOR EXPENSES; AMOUNT - Any person who has been or who may be admitted to any State hospital, or who is the subject of

counseling or receives treatment from the staff of a State hospital shall be deemed to be a patient for the purposes of this article, or the estate of any such patient or the person or persons legally liable for the support of any such patient, shall be liable for the expenses of his care, treatment and maintenance in such hospital, provided that no parent, guardian, spouse or relative shall be liable for any expense which arose from the care, treatment or maintenance furnished to any patient subsequent to institutionalization of such patient in a State hospital for a period of sixty months. Such expenses shall not exceed the actual per capita cost for the particular type of service rendered and shall be determined no less frequently than annually by the Department in accordance with standard accounting practice, but in no event shall recovery be permitted for amounts more than five

years past due. A certificate of the Director or Assistant Director of Reimbursement of the Department shall be prima facie evidence of the actual per capita cost for the particular type of service rendered."

Section 37.1-106. "MENTAL HEALTH AND MENTAL RETARDATION REVENUE FUND - All funds collected by the Department pursuant to this article shall be paid into a special fund of the State treasury which shall be known and referred to as the Mental Health and Mental Retardation Revenue Fund. This fund shall be appropriated and used for the operation of the Department of Mental Health and Mental Retardation and for research and training. Unexpended funds in the Mental Health and Mental Retardation Revenue Fund at the close of any fiscal year shall be retained in such fund and be available for expenditure in ensuing years as provided

herein."

Section 37.1-107. "NONRESIDENTS - Nothing in this title shall be construed to forbid any hospital to charge for the removal, care and maintenance of any mentally ill, alcoholic or mentally retarded nonresident who has been admitted to such hospital, and whose committee or next friend has contracted with such hospital for the care and maintenance of such person, nor shall it be construed to permit the admission or retention of any nonresident to the exclusion of a resident of the Commonwealth."

Section 37.1-108. "DEPARTMENT TO INVESTIGATE FINANCIAL ABILITY TO PAY EXPENSES - The Department shall make investigation and ascertain which of the patients, or which of the parents, guardians, trustees, committees, or other persons legally responsible therefor, are financially able to pay the expenses

of the care, treatment and maintenance, and such patient, parent, guardian, trustee, committee, or other person legally responsible therefor shall be notified of such expenses and, in general, of the provisions of this article."

Section 37.1-109. "ASSESSMENTS AND CONTRACTS BY DEPARTMENT - The Department may assess or contract with any patient, patient's parent, guardian, trustee, committee, or the person legally liable for his support and maintenance, and in arriving at the amount to be paid, the Department shall have due regard for the financial condition and estate of the patient, his present and future needs and the present and future needs of his lawful dependents, and whenever deemed necessary, to protect him or his dependents, may assess or agree to accept a monthly sum for his maintenance less than the actual per capita cost of his

maintenance; provided, however, that the estate of such patient other than income shall not be depleted below the sum of five hundred dollars. Nothing contained in this title shall be construed as making any such contract permanently binding upon the Department or prohibiting it from periodically reevaluating the actual per capita cost of care, treatment, and maintenance and the financial condition and estate of any patient, his present and future needs and the present and future needs of his lawful dependents and entering into a new agreement with the patient, patient's parent, guardian, trustee, committee, or the person liable for his support and maintenance, increasing or decreasing the sum to be paid for the patient's care, treatment, and maintenance. All contracts made by and between the Department and any person acting in a fiduciary capacity for

any patient adjudicated to be legally incompetent because of mental illness or mental retardation under the provisions of chapter 4 (Sec. 37.1-128.10 et seq.) of this title and all assessments made by the Department upon such patients or their fiduciaries, providing for payment of the expenses of such patient in any State hospital, shall be subject to the approval of any court of record having jurisdiction over the incompetent's estate or for the county or city of which he is a legal resident or from which he was admitted to said hospital."

Section 37.1-110. "APPLICATION FOR ORDER TO COMPEL PAYMENT OF EXPENSES - Upon the failure of any patient or of his guardian, committee, trustee or of the person or persons legally liable for his expenses, to make payment of the same, and whenever it appears from investigation that such patient, his guardian, committee,

trustee, or the person or persons legally liable for the support of such patient, has sufficient estate, or there is evidence of ability to pay such expenses, the Department shall petition the appropriate court having jurisdiction over the estate of the patient, or for the county or city of which he is a legal resident, or from which he was admitted to a State hospital; provided, however, in any case in which a person or persons legally liable for the support of the patient is being proceeded against, the petition shall be directed to the appropriate court of the county or city in which such person or persons legally liable for the support of such patient reside, for an order to compel payment of such expenses by persons liable therefor and in the following order:

First, by the patient or his estate; and second, by the person or persons legally liable for the support of such

patient. Such person or persons shall be the father, mother, husband, wife, child or children of the patient, provided the child or children have attained the age of majority. Such persons shall be jointly and severally liable. The Department shall collect such part of all of such expenses from the several sources as appears proper under the circumstances and may proceed against all of such sources. The proceedings for the collection of such expenses shall conform to the procedure for collection of debts due the Commonwealth. The legally liable persons shall be the father, mother, husband, wife, child or children of the patient, provided the child or children have attained the age of majority. Such persons shall be jointly and severally liable. Solely for the purpose of determining eligibility under the State plan for medical assistance, the father or mother, or both, of

a patient under twenty-one years of age, shall be liable or financially responsible for the care, treatment and maintenance of their child only to the extent of any family health insurance benefits that are payable for such care. After the exhaustion of family health insurance benefits, in determining the eligibility of patients under twenty-one years of age, the income and resources of the father or mother shall not be considered available to that patient if he does not regularly share the common household even if the patient returns to the common household for periodic visits."

Section 37.1-111. "NOTICE OF HEARING - Notice of any hearing, on the petition of the Department for an order to compel payment of such expenses, shall be served on the patient, and, if there be one, upon his committee, guardian or trustee, or upon the person or persons legally

responsible for the support of the patient or upon the person or persons against whom the proceedings are instituted, at least fifteen days prior to the hearing, and in the manner provided for the service of civil process."

Section 37.1-112. "HEARING AND ORDER; MATTERS FOR CONSIDERATION - At such hearing the court shall hear the allegations and proofs of the parties and shall by order require payment of maintenance or any part thereof by the parties liable therefore, if of sufficient ability, having due regard for the financial condition and estate of the patient, his present and future needs, and the present and future needs of his lawful dependents, if such proceeding is to charge the patient with such expenses; and if such proceeding is to charge any other person legally liable for such expenses, the court shall have due regard

for the financial condition and estate of such person, his present and future needs, and the present and future needs of his lawful dependents."

Section 37.1-113. "MODIFICATION OF ORDER; NOTICE AND PROCEEDURE - Upon application of any interested party and upon like notice and procedure, the court may at any time modify such order. If the application is made by any party other than the Department, the notice shall be served on the Commissioner."

Section 37.1-114. "APPEAL FROM ORDER OR JUDGMENT - Any party aggrieved by such order or by the judgment of the court may appeal therefrom in the manner provided by law."

Section 37.1-115. "EFFECT AND ENFORCEMENT OF ORDER OR JUDGMENT - Any order or judgment rendered by the court hereunder shall have the same force and effect and shall be enforceable in the same manner

and form as any judgment recovered in favor of the Commonwealth."

Section 37.1-116. "WHEN COLLECTION OF EXPENSES NOT REQUIRED - This article shall not be held or construed to require the Department to collect the expenses of the care, treatment, and maintenance of any indigent patient from such person, or to collect such expenses from any person legally liable therefor, where investigation discloses that such person legally liable for the support is without financial means, or that such payment would work a hardship on such person or his family. Neither shall it be the duty or obligation of the Department to institute any proceedings provided for in this article to effect such collection where investigation discloses that such proceedings would be without effect, or would work a hardship on such patient, or the person legally liable for his support.

Section 37.1-117. "LIABILITY OF ESTATE OF PATIENT - Upon the death of any patient or former patient, the estate of such patient shall be liable only for such charges remaining unpaid and not more than five years past due, and, in addition, the unsatisfied portion of any judgment rendered by a court in a proceeding had under this article. Upon the death of any patient or former patient the provisions of Sec. 37.1-109 prohibiting depletion of the patient's estate for the purpose of reimbursement of expenses below the sum of five hundred dollars shall after funeral expenses have no further application, and such sum may be applied to the charges of the Department remaining unpaid or may be applied to the unsatisfied portion of any judgment. Upon the death of any patient or former patient in the event amounts remain unpaid for his care, treatment and maintenance, the Department, having reason to believe that such patient died possessed of property

either real or personal, from which reimbursement may be had, shall prepare and acknowledge as deeds are acknowledged, a notice showing the name of such patient, the actual per capita cost of maintenance due, and shall file the same in the office of the clerk of the court in which deeds are admitted to record in the county or city in which the real or personal property is located, within four months or the date of death of the patient. The clerk of court shall record this notice as a lien is recorded, indexing it in the name of the patient and in the name of the Department of Mental Health and Mental Retardation. The filing of such notice shall create a lien against the estate, both real and personal, of such patient, prior to all other claims of the same class except prior liens. No such claim shall be enforced against any real estate of the patient dying, however, while such real

estate is occupied by the surviving spouse of the patient, or which such real estate is occupied by any dependent child or children of the patient."

Section 37.1-118. "STATEMENT FORMS TO BE COMPLETED BY PERSONS LIABLE FOR SUPPORT OF PATIENT - The Commissioner may prescribe statement forms which shall be completed by those persons legally liable under Sec. 37.1-105 for the support of the patient. Such statement shall be sworn to by such person and returned to the Commissioner within thirty days from the time such statement was mailed to such person. Should such person fail to return such statement to the Commissioner, properly completed, within thirty days, the Commissioner shall send another statement by registered mail and if the statement, properly completed, is not then returned within thirty days the person to whom is was sent by registered mail shall be assessed five

dollars for each week, or part of each week, in excess of the thirty-day period that the statement is overdue, which sum or sums shall be collected by the Department in the same manner as other sums due for the care, treatment and maintenance of patients from the persons whose duty it was to complete each statement, and, when collected, such sum or sums shall be paid into the same fund into which other collections are paid under this article. A statement of liability imposed by this section shall be placed in a prominent place, in boldface type, upon each statement form."

Section 37.1-119. "PAYMENT OF BILLS MONTHLY - The bills for the support of patients who are placed at board in families under the provisions of chapter 3 (Sec. 37.1-120 et seq.) of this title shall be payable monthly."

Section 20-61. "DESERTION OR NONSUPPORT OF WIFE, HUSBAND OR CHLDREN IN NECESSITOUS CIRCUMSTANCES - Any spouse who without cause deserts or willfully neglects or refuses or fails to provide for the support and maintenance of his or her spouse, and any parent who deserts or willfully neglects or refuses or fails to provide for the support and maintenance of his or her child under the age of eighteen years of age, or child of whatever age who is crippled or otherwise incapacitated from earning a living, the spouse, child, or children being then and there in necessitous circumstances, shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not exceeding five hundred dollars, or confinement in jail not exceeding twelve months or both, or in the case of a husband or father by confinement in the Bureau of Correctional Field Units or on work release

employment as provided in Sec. 53-166.1, for a period of not less than ninety days nor more than twelve months or in the case of a wife or mother in a State correctional institution for women for a period of not less than ninety days nor more than twelve months; or in lieu of the fine or confinement being imposed upon conviction by the court or by verdict of a jury he or she may be required by the court to suffer a forfeiture of an amount not exceeding the sum of one thousand dollars and the fine or forfeiture may be directed by the court to be paid in whole or in part to the spouse, or to the guardian, curator, custodian or trustee of the minor child or children, or to some discreet person or responsible organization designated by the court to receive it. This section shall not apply to any parent of any child of whatever age, if the child qualifies for and is receiving aid under a federal or State program for aid to the permanently

and totally disabled; or is an adult and meets the visual requirements for aid to the blind; and for this purpose any State agency shall use only the financial resources of the child of whatever age in determining eligibility." [1972 Code read no different as to who was obligated for support].

(b) COMMONWEALTH OF VIRGINIA
Department Of
Mental Hygiene and Hospitals

Western State Hospital
Staunton, VA

Hobart G. Hansen, M.D.
DIRECTOR

October 25, 1974

Mr. Charles A. Bridges
4405 Blue Spring Drive
Chantilly, Virginia 22021

Re: Mrs. Sylvia Bridges
Register No. 73540

Dear Mr. Bridges:

This is in response to your letter of October 21 to Doctor Hansen. The letter of October 15, 1974, stating that your wife would become a voluntary patient does not mean that we have any intention of discharging her. As you know, her mental

health has deteriorated to the point where she communicates very little, and she is not asking to leave the hospital.

Although neurological work-up at Johnston Willis and at Northern Virginia Mental Health Institute showed no organic brain disorder, both I and the Neurology Consultant here are repeating all these tests because her clinical symptoms present a picture that more closely resembles organic brain disease, although at this point we cannot find the exact cause.

We plan to continue to do Diagnostic Evaluation; and if your wife would insist of leaving, although I doubt it because of her mental condition, we would initiate appropriate application for commitment.

We also hope to find a cause for the tragic deterioration of your wife's health as soon as possible. If you have any questions, please contact me.

Sincerely,

/s/

John Wangler, M.D.
Clinical Director

JW/dmm

(This is contained in Petitioner's Exhibit #1)

(c) V I R G I N I A

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

COMMONWEALTH OF VIRGINIA DEPARTMENT OF MENTAL HEALTH AND MENTAL RETARDATION	:	LAW
Petitioner	:	NO.
-vs-	:	43385
CHARLES A. BRIDGES	:	
Defendant	:	

Fairfax, Virginia

Friday, March 23, 1979

The above-entitled matter came on to be heard before the Honorable Lewis D. Morris, Judge for the Circuit Court of Fairfax County, Courtroom 4, Fairfax County Courthouse, 4000 Chain Bridge Road,

Fairfax, Virginia, commencing at approximately 2:15 p.m.

APPEARANCES:

For the Petitioner:

GARY W. LONERGAN, ESQ.
Assistant Commonwealth Attorney
4000 Chain Bridge Road
Fairfax, Virginia 22030

For the Defendant:

MRS. KALETAH N. CARROLL
Attorney at Law
4015 Chain Bridge Road
Fairfax, Virginia 22030

- - -

. . . MRS. CARROLL: Okay. The only reason for the stipulation is, Your Honor, or the only reason for the presentation of evidence at all in these cases is that it is harder to prove the negative than the positive. There is no law in the State of Virginia, that I know of, that is in existence, that requires a father, mother spouse, or a child to pay support to the state for a prisoner who has been eating, sleeping, given medical care and attention

in the jails of the state, state owned and operated.

THE COURT: I think you agree to that.

MR. LONERGAN: Yes, I agree to that.

(d) V I R G I N I A :

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

COMMONWEALTH OF VIRGINIA DEPARTMENT OF MENTAL HEALTH AND MENTAL RETARDATION	)
Petitioner	)
vs.	)
CHARLES A. BRIDGES	)
Defendant	)

RESPONSE TO INTERROGATORIES

. . . 6. Question: State in verbatim what, if any, administrative standards were set by the Department of Mental Health and Mental Retardation for determining the ability of patients, parents, guardians, trustees and committees, pursuant to Section 37.1-108 of the 1950 Code of Virginia as amended, the date they

were enacted and identify, as set forth in the instructions, the administrative procedure used to arrive at the standard.

Response: None, Virginia Code Section 37.1-105 et seq. does not require the establishment of any administrative standards.

. . . COMMONWEALTH OF VIRGINIA
DEPARTMENT OF MENTAL HEALTH
AND MENTAL RETARDATION

By /s/
Counsel

REDMON & LONERGAN, P.C.

By /s/
Gary W. Lonergan
6911 Richmond Highway, Suite 400
Alexandria, Virginia 22306
703-768-6500
Counsel for Plaintiff

Certificate of Service

I hereby certify that a copy of the foregoing Response To Interrogatories was mailed, postage prepaid, to Kaletah N. Carroll, Esquire, Counsel for Defendant, at 4015 Chain Bridge Road, P.O. Box 434, Fairfax, Virginia 22030, this 21st day of

February, 1979.

/s/
Gary W. Lonergan

(e) V I R G I N I A

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

COMMONWEALTH OF VIRGINIA DEPARTMENT OF MENTAL HEALTH AND MENTAL RETARDATION	
Petitioner	LAW NO. 43385
-vs-	
CHARLES A. BRIDGES	
Defendant	

Fairfax, Virginia

Wednesday, May 9, 1979

The above-entitled matter came on to be heard before the Honorable Lewis D. Morris, Judge for the Circuit Court of Fairfax County, in Courtroom 5, Fairfax County Courthouse, 4000 Chain Bridge Road, Fairfax, Virginia, commencing at approximately 10:00 a.m.

APPEARANCES:

For The Petitioner:

GARY W. LONERGAN, ESQ.
Assistant Commonwealth Attorney
4000 Chain Bridge Road
Fairfax, Virginia 22030

For The Defendant:

MRS. KALETAH N. CARROLL
Attorney at Law
4015 Chain Bridge Road
Fairfax, Virginia 22030

. . . MRS. CARROLL: My theory is this. This is a state institution supported by state tax money. Now, you're asking for someone to come along to pay taxes again because it's not for individual services rendered to somebody, it is for anybody in that whole area, and it's a dual taxation. Now, I want to know for sure, if these are rendered based on a bill by services rendered, for what was done for her, only.

THE COURT: I think she has a right to know that. In other words, whether I'm supposed to be governed by that is another

thing, Mr. Lonergan, but this is her theory, and has been her theory all along, is the double taxation.

THE WITNESS: My answer to that is no. Like I say, it's a per capita cost. If the charge is $23 a day, she may have received medicine and treatment for $43 or $14.

BY MRS. CARROLL:

Q. And, it's not just an average of what the costs were to her, it's an average for everybody?

A. Yes, ma'am. . . .

SHARLENE J. THOMAS
Certified Verbatim Reporter
9007 Home Guard Drive, Burke, VA 22015
(703) 978-8866

(f) V I R G I N I A

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

COMMONWEALTH OF VIRGINIA DEPARTMENT OF MENTAL HEALTH AND MENTAL RETARDATION	:	LAW NO.
Petitioner	:	43385

-vs- :
:
CHARLES A. BRIDGES :
:
Defendant :
- - - - - - - - - - - - - - - x

Fairfax, Virginia

Wednesday, May 9, 1979

The above-entitled matter came on to be heard before the Honorable Lewis D. Morris, Judge for the Circuit Court of Fairfax County, in Courtroom 5, Fairfax County Courthouse, 4000 Chain Bridge Road, Fairfax, Virginia, commencing at approximately 10:00 a.m.

APPEARANCES:

For the Petitioner:

GARY W. LONERGAN
Assistant Commonwealth Attorney
4000 Chain Bridge Road
Fairfax, Virginia 22030

For the Defendant:

MRS. KALETAH N. CARROLL
Attorney at Law
4015 Chain Bridge Road
Fairfax, Virginia 22030

- - -

. . . BY MRS. CARROLL:

Q. Now, Mr. Critz, you used this, you say, to determine that this man was able to pay the difference in the money?

A. Yes, ma'am.

Q. On what basis, sir?

A. Well, that statement shows that he was saving somewhere--approximately a hundred dollars a month in life insurance. I didn't feel like--

Q. In life insurance?

A. Yes, ma'am.

Q. Show me where you find that on here.

A. It says, "Your life insurance."

Q. Yes, Washington Gas Light Company.

A. Yes, ma'am.

Q. Did you know whether it was voluntary or involuntary, that they took this out?

A. No, I didn't.

Q. You didn't?

A. But, I--the company--it's mandatory--mandatory life insurance.

Q. You knew that this man had a child.

A. Yes, ma'am.

Q. And you know that he was obligated to support this child.

A. But, I didn't feel like saving life insurance was a necessity to supporting a child.

(g) V I R G I N I A :

IN THE CIRCUIT COURT FOR THE COUNTY OF FAIRFAX

COMMONWEALTH OF VIRGINIA DEPARTMENT OF MENTAL HEALTH AND MENTAL RETARDATION,	)	
Petitioner	)	NO.
vs.	)	43385
CHARLES A. BRIDGES,	)	
Defendant	)	

PLEA IN BAR

Comes now the Defendant, by counsel, and files this his Plea in Bar to the Application filed herein by the Petitioner and as grounds therefor states as follows:

1. The Petitioner failed to comply with the mandatory terms of Section 37.1-108 of the 1950 Code of Virginia as amended at the time of commitment of Sylvia W. Bridges.

2. Sections 37.1-105 through 37.1-119 violate both the Constitution of the Commonwealth of Virginia and the United States Constitution and are void in that they are discriminatory against families of the mentally ill, they fail to set standards, they violate the due process of law clauses, they violate the equal protection of the law clauses, and it is discriminatory.

WHEREFORE, the Defendant moves this Honorable Court for an Order dismissing with prejudice this Application of the Plaintiff. . . .

/s/
Charles A. Bridges,
By Counsel

/s/
Kaletah N. Carroll
Counsel for Defendant
4015 Chain Bridge Road
P.O. Box 434
Fairfax, Virginia 22030

CERTIFICATE OF SERVICE

I do hereby certify that I have this 29 day of August, 1978, mailed a true copy of the foregoing Plea in Bar and Answer to Mr. Gary W. Lonergan, Counsel for Petitioners, 6911 Richmond Highway, Suite 400, Alexandria, Virginia 22306.

/s/
Kaletah N. Carroll

DISTRIBUTED
SEP 5 1980

Supreme Court, U.S.
FILED
SEP 5 1980
MICHAEL RODAK, JR., CLERK

No. 80-51

In The

SUPREME COURT OF THE UNITED STATES

1980 Term

CHARLES A. BRIDGES,
Appellant,

v.

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF MENTAL HEALTH AND
MENTAL RETARDATION,
Appellee.

ON APPEAL FROM THE SUPREME COURT
OF VIRGINIA

MOTION TO DISMISS
AND
MEMORANDUM IN SUPPORT OF
MOTION TO DISMISS

Marshall Coleman
Attorney General of Virginia

James E. Moore
Assistant Attorney General

William H. Hurd
Assistant Attorney General

1101 East Broad St.
Supreme Court Bldg.
Richmond, VA 23219

No. 80-51

In The

SUPREME COURT OF THE UNITED STATES

1980 Term

CHARLES A. BRIDGES,
Appellant,

v.

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF MENTAL HEALTH AND
MENTAL RETARDATION,
Appellee.

ON APPEAL FROM THE SUPREME COURT
OF VIRGINIA

MOTION TO DISMISS
AND
MEMORANDUM IN SUPPORT OF
MOTION TO DISMISS

QUESTION PRESENTED

Does the Appellant's Jurisdictional Statement raise a substantial federal question as to whether the Commonwealth denied him equal protection or due process of law?

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Statutes

§§ 37.1-105 through 37.1-119 of the Code of Virginia (1950), as amended . . . . passim

MOTION TO DISMISS

TO THE HONORABLE CHIEF JUSTICE AND JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Comes now the Appellee, Commonwealth of Virginia, Department of Mental Health and Mental Retardation, by Counsel, and moves this Court dismiss the appeal filed herein on the grounds that it does not present a substantial federal question. In support whereof, the Appellee says:

1.) The Appellant clearly fails to raise any substantial issue of equal protection since there is an obvious rational basis for the distinction created by the statutes to which he objects, §§ 37.1-105 through 37.1-119 of the Code of Virginia (1950), as amended.

2.) The Appellant clearly fails to raise any substantial issue of due process since the record shows that he received a

complete hearing prior to the determination of his legal rights and prior to any state action touching upon his constitutionally protected interests.

3.) The Appellant clearly fails to raise any substantial issue as to whether the Commonwealth acted arbitrarily in administering §§ 37.1-105 through 37.1-119, since the record fails to show that he was treated less favorably than persons of similar financial condition and estate.

MEMORANDUM IN SUPPORT OF MOTION TO DISMISS

STATEMENT OF FACTS

The Commonwealth would draw the Court's attention to the following facts, which bear most directly upon its claim that the Appellant has raised no substantial federal question:

1. Pursuant to Virginia law, the Commonwealth of Virginia, Department of Mental Health and Mental Retardation, brought a civil action against the Appellant, Charles A. Bridges, to compel him to pay for the care, treatment and maintenance furnished his wife in Western State Hospital.

2. After conducting a full hearing, the trial court found that the Appellant was liable for the amount claimed by the Commonwealth, said court having complied with the

statutory standard by taking into account the Appellant's ability to pay the charges assessed against him.

3. The Commonwealth made no attempt to levy upon or seize the property of the Appellant prior to a full hearing nor does the statute of which the Appellant complains allow for such summary, ex parte action upon a claim for mental health expenses.

4. Said decision to seek a court order compelling Appellant to pay was not arbitrary but was based on financial data provided the Department of Mental Health and Mental Retardation by the Appellant, and on the Appellant's refusal to pay voluntarily.

ARGUMENT

1.) The Appellant clearly fails to raise any substantial issue of equal protection since there is an obvious

rational basis for the distinction created by the statutes to which he objects, §§ 37.1-105 through 37.1-119 of the Code of Virginia (1950), as amended.

In reviewing Appellant's claim that he has been denied equal protection, it is helpful to focus first on the nature of the distinction to which he objects. He says that "the state has arbitrarily chosen to enforce the duty [of support] against the families of the mentally ill, while at the same time exempting the families of others involuntarily incarcerated." (Appellant's Jurisdictional Statement at page 19.) Although he frequently uses such general terms as "others involuntarily incarcerated," it is clear that he is talking about only one specific category of persons--those in jails and prisons. His complaint is that

families of state mental patients are liable for the patients' care, treatment and maintenance while families of prisoners have no similar liability.

Since this case obviously does not involve a suspect classification or touch on fundamental rights, there is no need for strict scrutiny. The appropriate equal protection analysis is simply whether the distinction bears some rational relationship to a conceivable legitimate state interest or purpose. See Trimble v. Gordon, 430 U.S. 762, 97 S. Ct. 1459 (1976). The Commonwealth contends that this standard is clearly met by its statutes, §§ 37.1-105 through 37.1-119.

Although mental health hospitals and prisons often share the common element of involuntary confinement, there is an obvious, common sense distinction between the two which the legislature no doubt had in mind in

drawing the distinction of which the Appellant complains. A primary purpose of mental health hospitals is to benefit the patient by providing him treatment and an environment in which he will not be dangerous to himself or others. Thus, it is appropriate that the patient be charged with the costs of his care, treatment and maintenance. Likewise, if he is unable to pay, it is appropriate that members of his immediate family, who have a moral duty of support, be asked to pay in so far as they are able to do so.

Prisons are quite different. Although they often make some attempt to rehabilitate inmates, the basic fact of confinement is predicated upon a need to punish the offender and protect society from violence or fraud. Although a state might well decide to charge the prisoner with the costs of his confine-

ment, it would be a far different matter to make the prisoner's family pay for his food and clothing or the salaries of his guards. It would, in fact, raise serious questions of equity and due process to impose such monetary burdens upon a man's innocent relatives as a consequence of his criminal conviction. It is one thing to ask that a man's family help shoulder the cost of trying to restore his health. But it is a far different matter to impose upon them a portion of the penalty for another individual's misconduct. Thus, it should be clear that the distinction which the Commonwealth has drawn bears a rational relationship to legitimate state purposes--reimbursing the state treasury for the services provided by its mental health hospitals and maintaining an equitable system of criminal justice.

2.) The Appellant clearly fails to raise any substantial issue of due process since the record shows that he received a complete hearing prior to the determination of his legal rights and prior to any state action touching upon his constitutionally protected interests.

The Appellant claims that the Commonwealth denied him due process of law. Yet, he does not allege that there was any taking of his property prior to a hearing, nor does he suggest that the hearing he received was biased or otherwise unfair. Instead, he objects to the Commonwealth's initial decision to bill him for the care provided his wife. Due process was violated, he says, because there was no opportunity for a hearing before any charges were assessed. Under Virginia law, the obligation of a

spouse to reimburse the Department for its expenses is limited to the spouses' ability to pay. See esp. §§ 37.1-109 and 37.1-110. (Appellant's Jurisdictional Statement, Appendix, page 15a through 20a). Appellant seems to believe that he is entitled to a hearing before he is billed so that he might challenge the Commonwealth's evaluation of his financial ability. The Commonwealth contends that such an argument by the Appellant fails to raise any serious issue before this Court. Due process requires a hearing before any taking of property, but it does not require a hearing before the state can inform an individual of its claim of indebtedness. In accordance with due process, the Appellant received a complete hearing in the Circuit Court of the County of Fairfax, Virginia. (See Order of Court, Appellant's Jurisdiction Statement, Appendix page 2a). At that time, he had the opportunity to raise

all defenses to which he thought himself entitled, including any suggestion that he was unable to pay. In fact, the trial court expressly considered the financial condition and the estate of the Appellant, as well as his present and future needs, but found that he did have sufficient ability to pay for the expenses of his wife. (See Appellant's Jurisdictional Statement, Appendix page 3a, paragraph 4.)

It is also clear that the authorities cited by the Appellant do not support his position. The Appellant cites Fuentes v. Shevin, 407 U.S. 67, 92 S. Ct. 1983 (1972), cert. denied, 409 U.S. 902, 93 S. Ct. 180 (1972), for the proposition that notice and hearing must be granted at a meaningful time. In Fuentes, the Court struck down Florida and Pennsylvania statutes by which plaintiffs could obtain summary, pre-judgment seizure of property. Even though those statutes allowed

a post-seizure hearing, the Court found that due process had been violated and noted that:

> "If the right to notice and a hearing is to serve its full purpose, then, it is clear that it must be granted at a time when the deprivation can still be prevented." 407 U.S. 67, 81, 92 S. Ct. 1983, 1994.

In the present case, there was no summary, pre-judgment seizure of property. The hearing in the trial court was timely since it was a necessary first step in the Commonwealth's attempt to enforce its claim.

In Hannah v. Larche, 363 U.S. 420, 80 S. Ct. 1502 (1960), the question involved investigations by the U.S. Commission on Civil Rights into alleged civil rights violations. In deciding that witnesses summoned before the Commission did not have the right to confront or cross-examine complainants, the Court said that:

> "When governmental agencies adjudicate or make binding determinations which directly affect the legal rights of

> individuals, it is imperative that those agencies use the procedures which have traditionally been associated with judicial process. On the other hand, when governmental action does not partake of an adjudiciation, as for example, when a general fact finding investigation is being conducted, it is not necessary that the full panoply of judicial procedures be used." 363 U.S. 420, 442, 80 S. Ct. 1502, 1514, 1515.

Since the Commonwealth's evaluation of an individual's ability to pay is not a binding determination and does not directly affect his legal rights, the Hannah case does not require the Commonwealth to hold a hearing before deciding whether or how much to assess a patient's spouse.

The case of Morgan v. United States, 304 U.S. 1, 58 S. Ct. 773 (1937), also fails to furnish Appellant with any reliable authority for his position. In Morgan, the administrative proceedings were quasi-judicial in nature, being conducted by the Secretary of Agriculture to determine whether the charges

for certain stockyard services were reasonable. In that case, the administrative procedings involved an adjudiciation of fact which directly affected constitutionally protected interests. Thus, there is no similarity with the present case where the action of the Commonwealth in billing the Appellant does nothing to deprive him of any interest whatsoever. The Commonwealth is in the same position here as any other creditor and has no power to take the debtor's property until it has first obtained a judgment in a court of law.

Similarly, the Appellant's reliance on the Michigan case of Miller v. State Department of Revenue, 188 N.W. 2d 795 (1971) is misplaced. That case bears a superficial similarity to the present one in that it also involved determinations by a state agency as to the financial ability of relatives of state mental patients. But the

Michigan statutes were quite different from Virginia law in that an execution could be obtained in Michigan solely on the assessment of the state agency and without any hearing whatever. See 188 N.W. 2d 795, 800, note 14. Since the Virginia statutes require a court hearing before any execution can take place, the due process problem inherent to the Michigan law does not exist here and the Miller case is wholly inapplicable.

3.) The appellant clearly fails to raise any substantial issue as to whether the Commonwealth acted arbitrarily in administering §§ 37.1-105 through 37.1-119, since the record fails to show that he was treated less favorably than persons of similar financial condition and estate.

Intermingled with the argument that he deserved a hearing prior to the assessment of his bill, the Appellant also suggests that the Commonwealth might be applying its statutes arbitrarily, thus denying equal protection. He suggests that the Commonwealth might be acting unfairly by billing him while sparing others "who really can pay." (See Appellant's Jurisdictional Statement at page 27.) Such a suggestion is sheer speculation. To show that unequal administration of a state statute offends the equal protection clause, one must show an intentional or purposeful discrmination. Whitney Stores, Inc. v. Summerford, 280 F.Supp. 406 (D.C.S.C. 1968), aff'd 373 U.S. 9, 89 S. Ct. 44. If Appellant had any facts with which to support such a theory, he had a complete opportunity to present them before the trial court. But even today, Appellant has

not pointed to any evidence to indicate that he was treated differently than any other person of similar financial condition and estate.

CONCLUSION

In consideration whereof the Appellant, Commonwealth of Virginia, Department of Mental Health and Mental Retardation moves this Court to dismiss the instant appeal for failure to raise a substantial federal issue.

Respectfully submitted,

Commonwealth of
Virginia, Department of
Mental Health and Mental
Retardation

By: _____
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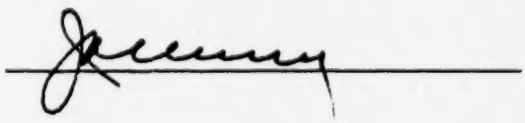
Certificate of Service

I hereby certify that on this 28TH day of August, 1980, I served three copies of the foregoing Motion to Dismiss and Memorandum in Support of Motion to Dismiss on Kaletah N. Carroll, 4015 Chain Bridge Road, Post Office Box 434, Fairfax, Virginia 22030 by mailing the said copies by United States mail, postage prepaid and properly addressed.



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No. 80-51

In The

SUPREME COURT OF THE UNITED STATES

1979 Term

CHARLES A. BRIDGES,

Appellant,

v.

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF MENTAL HEALTH and
MENTAL RETARDATION,

Appellee.

ON APPEAL FROM THE SUPREME COURT
OF VIRGINIA

BRIEF OPPOSING MOTION TO DISMISS

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Comes now the Appellant and in opposition to the Motion to Dismiss filed by the Appellee respectfully sets forth the following points and authorities:

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1. The Appellee, in its Statement of Facts, has erroneously assumed that the charges the Commonwealth seeks to recover against the Appellant were in fact charges for the care, treatment and maintenance furnished the Appellant's wife. By both the admission of the Commonwealth in trial (Appendix page 37a, 37b) and the terms of the statutes in question, (Appendix page 11a, 11b, 15a) the charges are not for services rendered to Mrs. Bridges. Mr. Bridges is being charged for those who cannot pay as well as being taxed for the same thing, and chis is certainly discrimination and unequal protection of the law, when his duty of support is no different from all other spouses of persons involuntarily incarcerated in Virginia.

2. As to number two of the Appellee's Statement of Facts, the Appellant must point out that he only received a

hearing four years after his liability to pay had been determined by some clerk of the Department of Mental Health and Mental Retardation by a process the Commonwealth admitted was without any standards because, in its words, the statute did not require standards. He had already been selected to pay by the time he went to Court, almost four years later.

3. The financial data sheet referred to by the Appellee, in its Statement of Facts of page 4 shows the gross abuse exercised by the Appellee because the statement is so blatently erroneous. It contains no expenses for food, clothing, transportation and other necessary expenses that the Appellee would have been bound to consider if the Appellant could have had a hearing and Counsel to represent

him prior to his being picked and chosen to pay. These sheets are no different than the correspondence referred to in McDonald v. McLucas, 381 F. Supp. 831.

4. The Appellee has assumed incorrectly in its Argument on page 5 of its Motion to Dismiss that the Appellant means by "others involuntarily incarcerated" only those in jails and prisons. The Appellee ignores those juveniles in detention homes which are not jails, but are institutions in which children are incarcerated and for which parents in Virginia are not required to pay any maintenance, support, nor care for such child on any basis, although the duty to support one's child continues to exist while such child is in detention or foster homes.

5. The Appellee states on page 6 of its Motion to Dismiss that this case does not involve a "suspect classifica-

tion" or touch on fundamental rights, and consequently there is no need for strict scrutiny. The Appellee misses the point entirely. The families of the mentally ill are being placed in a class by the Commonwealth when there is no basis for such a classification by the law. To classify when there is no basis for classification is certainly a violation of a fundamental right, the right to equal treatment of all persons in similar circumstances. The duty of families of those incarcerated in a mental institution is no different from those incarcerated in any other state institution. To argue that because a person is mentally ill, the family is different, does indeed create a "suspect classification" in fact if not in law. Historically, the families of the mentally ill have suffered devistating discrimi-

nation by society because of society's bias and prejudice. The law should not compound such a wrong.

6. As to the Appellee's statement on page 7 of its Motion to Dismiss that " . . . the basic fact of confinement is predicated on the need to punish", modern penalogists would certainly voice grave and justified alarm. It is not the law of today. Williams v. People of the State of New York, 337 U.S. 241; Pell v. Procunier, 417 U.S. 817; Bowring v. Godwin (Virginia), 551 Fed. 2d. 44. The primary object of incarceration is rehabilitation so that such person can take his place in society again. This benefits the incarcerated person's family as well as society. Is not punishment part and parcel of rehabilitation? If the reason for imprisonment is not rehabilitation solely, either

through punishment, training or treatment, than our system of law is all wrong. Society would not need jails in that case, only gallowses. If the Appellee is correct in its argument, society should save its money and effort because such a position is a statement that the criminal is never going to change. However, the Appellee is wrong. Criminals are rehabilitated, and punishment is a part of rehabilitation so that the criminal will know the pain and frustration that will result from future violations and refrain from committing a crime.

7. Further, the Appellee says on page 8 of its Motion to Dismiss that to "impose such monetary burdens [the duty of support] upon a man's [criminal's] innocent relatives as a consequence of his criminal conviction would raise serious questions of equity and due

process." Are an insane man's relatives any more guilty of his status than a criminal's relatives? A spouse of a mentally ill person is no more responsible for the necessity of incarceration of the mentally ill than the criminal's spouse is responsible for the criminal's act. The duty of the spouse for support is, however, the same in both cases. The Appellee's argument that to require an innocent spouse to pay for the incarcerated person's "food, clothing or salaries of his guards" would raise serious questions of equity and due process is certainly acknowledgment that the Appellant's position is well founded.

8. On page 15 of Appellee's Motion to Dismiss, the Appellee says that the Appellant had failed to show that he was treated less favorable than others

of similar financial "condition and estate". Certainly it is within the judicial knowledge of all courts, as it is in the general public knowledge, that there are spouses, children and other relatives of extremely wealthy people incarcerated in all jails, detention homes, and foster care facilities, including Virginia, and the Appellee has admitted it makes no charge for the care, maintenance and support of such persons.

9. The court hearing that the Appellant was given and which the Appellee points to in arguing that the Appellant was not denied due process of law (pages 9, 10, 11, 12, 13, and 14 of the Motion to Dismiss), is limited by the statutes in question to the amount the spouse of the mentally ill person is to pay for the per capita costs of the operation of

the mental institution. The question of whether the spouse can pay, however, is determined by this administrative process that is totally devoid of any constitutional safeguards. By the time of the court hearing, the crucial decision had already determined the fact of the liability. In this case, the court hearing took place almost four years after the administrative decision had been made. The statutes in question give the Appellant no right to a court hearing or appeal to a court concerning the initial decision made by the administrative agency at the time the decision is made. This is indeed crucial because only $500.00 of a spouse's or family member's entire estate is exempt from the obligation of the debt. The circumstances of an obligee can change in four years to a point where he is

financially devistated.

CONCLUSION

Protection of society from all those involuntarily incarcerated, as well as rehabilitation of those individuals, is a function of the state. The state should provide the costs of this function, otherwise, spouses and relatives of those dangerously mentally ill will be reluctant to ever report such mental illness or take steps to provide treatment for such persons. The relatives first see the symptoms of mental illness, and their cooperation in obtaining early treatment for them to protect the public and themselves is necessary, or society is indeed in danger.

Respectfully submitted,

Charles A. Bridges

CHARLES A. BRIDGES, By Counsel

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CERTIFICATE OF SERVICE

COMMONWEALTH OF VIRGINIA

COUNTY OF FAIRFAX, to-wit:

Personally appeared before me, Susan Lynn Collier, a Notary Public in and for the County aforesaid, in my said County, on this 8th day of September, 1980, KALETAH N. CARROLL, who first being duly sworn states as follows:

1. That the Appellant received three copies of the Appellee's MOTION TO DISMISS and MEMORANDUM IN SUPPORT OF MOTION TO DISMISS on August 29, 1980, and

2. That she mailed three copies of the foregoing BRIEF OPPOSING MOTION TO

DISMISS on September 8, 1980, postage prepaid and properly addressed, to Gary W. Lonergan, 2 Skyline Place, Suite 103, 5302 Leesburg Pike, Baileys Crossroads, Virginia, 22041, and three copies to Marshall Coleman, Attorney General of Virginia, James E. Moore and William H. Hurd, Assistant Attorneys General of Virginia, and that Mr. Lonergan, Mr. Coleman, Mr. Moore and Mr. Hurd are the attorneys for the Appellee.

Kaletah N. Carroll
KALETAH N. CARROLL

SUBSCRIBED and SWORN to before me this 8th day of September, 1980.

Susan Lynn Collier
Notary Public, as aforesaid

My Commission Expires: April 23, 1984.